

## Retiree Activities Office

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### **RAO Newsletter # 95 - February 15, 2011 - Health Care Reform**

**A federal judge's decision 31 JAN to declare the new health care law unconstitutional prompted immediate questions about what might happen to the law's implementation — suggesting to some a scenario in which 26 states could sit back and wait to see what happens as the case is appealed up to the Supreme Court. In a decision that surprised some legal observers, U.S. District Judge Roger K. Vinson of Florida declined to sever the overhaul's individual mandate — which requires most Americans to have health insurance or pay a fine —and instead ruled that all of the overhaul is unconstitutional.**

**While the whole law does not go fully into effect until 2014, most states are moving ahead on planning for Medicaid expansion, state-based exchanges, new medical payout standards and other provisions. What's more, parts of the law are in effect now — seniors already have received payments for prescription drug assistance, and young adults have been added to their families' insurance plans, for example. In an earlier decision in Virginia, U.S. District Court Judge Henry E. Hudson severed the individual mandate and separately ruled it unconstitutional, allowing the rest of the law to stand. In his 78-page ruling, Vinson, an appointee of President Ronald Reagan, said the government cannot force Americans to buy health insurance, using a favorite analogy of the increasingly influential tea party movement. It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America, would have set out to create a government with the power to force people to buy tea in the first place, Vinson wrote. In part, Vinson's decision said:**

*"... I must reluctantly conclude that Congress exceeded the bounds of its authority in passing the Act with the individual mandate. That is not to say, of course, that Congress is without power to address the problems and inequities in our health care system. The health care market is more than one sixth of the*

*national economy, and without doubt Congress has the power to reform and regulate this market. That has not been disputed in this case. The principal dispute has been about how Congress chose to exercise that power here. Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void."*

More than 20 suits have been filed against the law. The two judges that have found it unconstitutional are Republican appointees. Two other judges — both named by Democratic presidents — have said it does not violate the Constitution. The Supreme Court is expected to settle the question within the next one to two years. Despite Vinson's ruling, White House officials and Democrats insisted that implementation of the law (PL 111-148, PL 111-152) would continue without interruption, both on the federal level and in the states.

We don't see any basis for the opinion that somehow implementation stops, a senior administration official told reporters. There is no indication that states will be deterred from the hard work of implementation, the official said. Timothy Jost, law professor at Washington and Lee University and an administration ally, said there was no reason the rest of the law, including its consumer protections, could not continue to move ahead. *"This . . . is going to have to be sorted out by the courts of appeal and perhaps ultimately by the Supreme Court,"* Jost said. But some conservative scholars raised questions about whether the 26 states involved in the Florida suit might be able to opt out of putting the law in place — although no states showed an indication to do so immediately after the ruling. Robert Alt, an analyst at the conservative Heritage Foundation, said Vinson essentially granted to the 26 states declaratory relief they could use to get out of the Medicaid expansion, which has brought strong objections from state capitals burdened by the economic downturn.

Because the entire act was struck down, the future requirements to expand Medicaid programs will be suspended, at least as to these 26 states, and these states will be relieved of their obligation to make plans for such expansion in the immediate future, Alt said. At a time when many states face insolvency, the removal of this burden is welcome news. He said the Obama administration should allow all 50 states to hold off on their Medicaid expansions until the case is resolved. The Medicaid question, though, is further complicated because Vinson in his ruling specifically rejected the states' argument that the expansion is unconstitutional because they are coerced into accepting it.

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**Medicaid question, though, is further complicated because Vinson in his ruling specifically rejected the states' argument that the expansion is unconstitutional because they are coerced into accepting it. Wisconsin Attorney General J.B. Van Hollen, whose state is a plaintiff in the suit, praised the decision in a statement but said nothing about implementation or Medicaid. Judge Vinson has confirmed the conclusion I reached when this law was enacted, Van Hollen said. Congress is free to reform health care, but it must do so in a constitutional manner. It simply does not have the authority to require people to either purchase health insurance or pay a fine.**

**In a conference call with reporters, White House officials characterized Vinson's decision as odd and unconventional and out of the mainstream of judicial thought. It will be appealed to the U.S. Court of Appeals for the 11th Circuit, they said. They also compared it to district court decisions that initially struck down the law enacting Social Security. Supporters emphasized that doing away with the law would mean doing away with popular consumer protections. The health care reform law is already helping middle-class families, seniors and small businesses with savings and providing Americans more control over their health care choices, said Rep. Edward J. Markey (D-MA). But congressional opponents of the measure who are pushing for repeal said their hand was strengthened by the ruling. Wyoming Sen. Michael B. Enzi, the top Republican on the Health, Education, Labor and Pensions Committee said, Judge Vinson's decision moves us one step closer to allowing Americans to keep the plans they have and preventing the higher insurance premiums that will result from this deeply flawed law. [Source: CQ HealthBeat associate editor Jane Norman article 1 Feb 2011 ++]**